

NOTES TO THE TABOR REPORT

NOTE 1. BASIS OF ACCOUNTING

Pursuant to Article 77 of Title 24, Colorado Revised Statutes, this report is prepared in accordance with generally accepted accounting principles (GAAP) except where an irreconcilable difference exists between GAAP, and state statute or the provisions of Section 20, Article X of the state constitution (TABOR).

The accounting principles used by the State are more fully described in the States Comprehensive Annual Financial Report available from the State Controllers Office.

NOTE 2. DEFINITION OF THE DISTRICT

TABOR defines the district as "the state or any local government, excluding enterprises." It further defines enterprise as "a government-owned business authorized to issue its own revenue bonds and receiving under 10 percent of annual revenue in grants from all Colorado state and local governments combined."

The General Assembly, for the purpose of implementing TABOR, stated in CRS 24-77-102(16)(a) that "state" means the central civil government of the State of Colorado, which consists of the following:

- (I) the legislative, executive, and judicial branches of government established by Article III of the state constitution;

- (II) all organs of the branches of government specified in subparagraph (I) of paragraph (a) of this subsection (16), including the departments of the executive branch; the legislative houses and agencies; and the appellate and trial courts and court personnel; and

- (III) state institutions of higher education.

- (b) "state" does not include:

- (I) any enterprise;

- (II) any special purpose authority.

The General Assembly has designated the State Lottery, the Guaranteed Student Loan Program, the Division of Correctional Industries, the Division of Wildlife, the State Fair Authority, Colorado Student Obligation Bond Authority, and the State Nursing Homes as enterprises excluded from the district. It further set up a mechanism in statute by which the governing boards of the institutions of higher education could designate certain auxiliary operations as enterprises, also exempt from TABOR.

Although the General Assembly has designated certain enterprises as exempt from TABOR, they must also meet certain criteria annually. The State Fair Authority did not meet those criteria in the current or previous fiscal year.

NOTE 3. DEBT

Certificates of Participation, which are used by the State for long-term lease purchases, are not considered debt of the State for purposes of this report as provided by CRS 24-30-202(5.5).

In interrogatories submitted by the General Assembly regarding House Bill 99-1325, the Colorado Supreme Court ruled that Revenue Anticipation Notes (RANS) issued by the Colorado Department of Transportation do not constitute debt of the State as defined in Section 3, Article XI of the constitution. However, the Court ruled that they are a multiple-fiscal year obligation as defined by Section 20, Article X of the constitution, thus, requiring an election before they could be issued. In November 1999 the voters approved the issuance of \$1.7 billion of RANS.

NOTE 4. EMERGENCY RESERVES

TABOR requires the reservation, for declared emergencies, of 3 percent or more of the Fiscal Year Spending, excluding debt service payments. An Executive Order by the Governor transferred \$15,000,000 from the Severance Tax Trust Fund to the Disaster Emergency Fund to fund firefighting efforts.

This reduced the required reserve for FY 2001-02 to \$217,566,336.

The State has designated \$54,442,953 of the Severance Tax Trust Fund, \$27,474,176 of the Employment Support Fund, and \$38,813,100 of the Wildlife Cash Fund for this reserve. The remaining amount of \$96,836,107 needed to meet the emergency reserve requirement comes from the \$139.98 million of Capital Assets, Net of Related Debt, in the Wildlife Fund. In the event of an emergency that exceeded the financial assets in the reserve, these capital assets would have to be liquidated to meet the constitutional requirement.

NOTE 5. STATUS OF REFUNDING

During Fiscal Year 2001-02, the State had accrued or made a refund of \$69.6 million over its liability for the Fiscal Year 1999-00 excess revenues. Per statute (CRS 24-77-103.7), this over-refunding is to be treated as a reduction of the following years excess revenue liability. In prior years this would have been accomplished by reducing gross revenues, which reduces the year-end excess revenue liability accrual. Since there were no excess revenues in Fiscal Year 2001-02, the Controller reduced the still remaining Fiscal Year 2000-01 TABOR liability by \$41.0 million, resulting in a June 30, 2002 liability of \$48.9 million. This amount represents an estimate of the amount taxpayers will still claim on their 2001 tax returns after June 30, 2002 owed to them because of the TABOR refund mechanisms enacted by the General Assembly.

A class action suit has been brought against the State seeking damages equal to the cumulative sales tax refund. The State has refunded \$3.25 billion since Fiscal Year 1996-97. The suit alleges that the refund program violates interstate commerce, equal protection and privileges, and immunity clauses of the U.S. Constitution. It also alleges that the TABOR amendment, under which the refund was made, violates the equal protection and due process clauses of the Colorado Constitution.

NOTE 6. COLORADO DIVISION OF WILDLIFE

The General Assembly in the 2001 Legislative Session changed the status of the Colorado Division of Wildlife to a TABOR exempt enterprise. The Division switched from a special revenue fund to an enterprise fund and began its accounting as a government owned business effective July 1, 2001.

NOTE 7. INTERFUND TRANSFERS

The large increase in Interfund Transfers is the result of the State's implementation of GASB Statement 34, *Basic Financial Statements B and Management's Discussion and Analysis B for State and Local Governments*. Adoption of this statement resulted in significant changes in the State's fund structure. In particular, many funds previously considered part of the General Fund became special revenue funds. Where before, transactions between these funds and the General Fund were intrafund transactions and previously eliminated for this report, they are now interfund transactions. The most significant is the \$2,083.2 million transfer from the General Fund to the State Public School Fund, which is now treated as an interfund transfer.

NOTE 8. OTHER SOURCES AND ADDITIONS

This line item consists primarily of \$220.0 million of revenue anticipation notes for highway construction, \$529.2 million of investment and pension trust fund additions by participants, \$28.2 million of reimbursements of prior year expenditures, and \$10.2 million of refunding bond proceeds.

Other sources include \$15.9 million in advances from private sources to the colleges and universities, reversions of accruals of accounts payable of \$9.2 million, \$8.8 million from the Great Outdoors Colorado Authority to the Department of Natural Resources, and \$22.1 million in other exempt revenues and required governmental accounting entries.

NOTE 9. VOTER APPROVED REVENUE CHANGES

The voters in the 1998 general election approved an initiated law, CRS 25-8-501.1, Regulation of Commercial Hog Facilities, adopting the permit fee. The State collected \$233,495 and \$246,688 from this revenue in Fiscal Years 2001-02 and 2000-01, respectively.

The voters in the 2000 general election approved an amendment that added Section 14 to Article XVIII of the state constitution. This amendment allowed the use of marijuana for medical purposes and authorized the Department of Public Health and Environment to charge a fee for the issuance of a permit for such purpose. The State collected \$27,889 from this revenue in Fiscal Year 2001-02.

The voters in the 2000 general election approved an amendment that added Section 17 to Article IX of the state constitution. This amendment created the State Education Fund and shifted the revenues from a tax of one-third of one percent on taxable income of individuals, corporations, estates, and trusts to this fund. It also exempted that revenue from TABOR.

The amendment was effective January 1, 2001 and resulted in \$289,112,326, and \$168,810,875 of revenues being excluded from Fiscal Year Spending in Fiscal Years 2001-02 and 2000-01, respectively. The amount for Fiscal Year 2001-02 includes Education Fund transfers of \$272.9 million and interest income of about \$16.2 million.

NOTE 10. DISTRICT RESERVES

District reserves are the cumulative fund balances of the State, excluding the capital assets and non-fund liabilities of the governmental funds and fund balances of the exempt enterprises. The majority of these fund balances are not available for appropriation due to legal and contractual restrictions.

Adjustments to the beginning fund balances occur for various reasons. In Fiscal Year 2001-02 the State implemented GASB Statement No. 35 - *Basic Financial Statements C and Management's Discussion and Analysis C for Public Colleges and Universities*. Under this statement the colleges and universities had to restate their beginning fund balances for the effects of converting to full accrual accounting, including the depreciation of capital assets and the the deferral of revenue previously recorded as advances. This resulted in the reduction of beginning fund balance by \$1,436.9 million.

Other adjustments by the colleges and universities resulted in increases to the beginning fund balance of \$17.2 million.

In Fiscal Year 2001-02 the State also adopted GASB Interpretation No. 6. This resulted in \$25.3 million of current risk management claim liabilities no longer being reported in the funds. This resulted in an increase to beginning fund balance for the same amount.

Another change related to the adoption of GASB 34 was the removal of the Supreme Court Library from a trust fund, which resulted in \$5.1 million of its capital assets being removed from the beginning fund balance.

In addition, the State Land Board recorded a \$4.4 million increase in the value of their lands resulting from various land swaps that had occurred in previous fiscal years. This resulted in an increase to the beginning fund balance for the same amount.

Other minor adjustments were made to the beginning fund balance because of previous years= accounting errors, as described in Note 16, or changes to various fund alignments resulting from adoption of the new reporting model.

District reserves/fund balance may also be adjusted for the qualification or disqualification of enterprises. The qualification of the Division of Wildlife in the Department of Natural Resources on July 1, 2001, resulted in a reduction to the District reserve of \$55.8 million for the net assets of the Division transferred to the TABOR exempt enterprise.

NOTE 11. ENTERPRISE QUALIFICATION /DISQUALIFICATION

TABOR specifies that qualification and disqualification of enterprises shall change the district bases. Due to the qualification of the Division of Wildlife as a TABOR exempt enterprise, the Fiscal Year 2000-01 Fiscal Year Spending Limit was reduced by the amount of TABOR non-exempt revenues the Division received in Fiscal Year 2000-01 adjusted for inter-district transactions involving the Division that had been recorded as exempt during Fiscal Year 2000-01 by other agencies.

NOTE 12. SOURCES OF TABOR GROWTH LIMITS

The allowable increases in state fiscal year spending equal the sum of inflation and the percentage change in state population in the prior calendar year, adjusted for voter approved revenue changes. Inflation is defined in CRS 24-77-102(8) as "the percentage change in the consumer price index for the Denver-Boulder Consolidated Metropolitan Statistical Area For All Urban

Consumers, All Goods, as published by the U.S. Department of Labor."

The percentage change for calendar year 2000 used in this report was provided by the Office of State Planning and Budgeting.

NOTE 13. GROWTH DIVIDEND

The 2000 Federal Census adjusted the change in the States population between 1999 and 2000 by 6.0 percent to account for a larger than estimated population change in the State during the 1990s. If the estimates of the States population change had been more accurate then the State would have been able to retain larger amounts of the TABOR non-exempt revenues to meet the needs generated by this growth.

Thus, the General Assembly passed legislation in the 2002 Session that recaptures the revenues lost because of the error in the population estimates. This is commonly referred to as the growth dividend. The growth limit of 4.0 percent between Fiscal Years 2000-01 and 2001-02 presented in the Schedule represents only the inflation portion of the allowable growth.

The 6.0 population adjustment that would normally be included, will be preserved by the State and used to increase the allowable growth the State may retain until the 6.0 percent is exhausted, or until the current decade lapses, whichever occurs first.

NOTE 14. VOTER APPROVED CHANGE IN THE SPENDING LIMIT

In the 2001 election the voters approved a referred amendment to the state constitution= Article X. The amendment decreased the property valuation subject to local property tax of residents 65 and older, who have resided in their homes for ten years. The amendment also increased the States Fiscal Year Spending Limit by \$44.1 million, the amount the State estimated that it would need to defray the lost revenues of the local governments.

NOTE 15. EFFECT FOR CHANGE IN ACCOUNTING PRINCIPLE

In Fiscal Year 2001-02 the State implemented GASB Statements No. 34 and 35 which required that revenues be shown net of any discounts. Tuition, fees, and other revenue charges of the institutions of higher education have historically been shown gross and the discounts given as a scholarship expense. Beginning this fiscal year, these revenues are shown net of any scholarships from institutional funds.

It is the States policy that changes in accounting principles will have no net effect upon the TABOR excess revenue calculation. Thus, because the revenues were reduced \$128.8 million by this change in principle, the spending limit was also reduced by an equal amount.

NOTE 16. CORRECTIONS TO PRIOR YEARS' REFUNDS

Errors in prior years=refunds are corrected in the year in which the error is discovered. The Land Board in the Department of Natural Resources had failed to record revenues of \$376,577 after numerous leases had expired even though the lessee was still obligated for payment. This process has been corrected.

The Office of Economic Development failed to record \$1,606,320 of in-kind revenue received for advertising revenues of an agent of the Colorado Tourism Board.

An entry for Metropolitan State College of \$301,231 was inadvertently reported twice in two different fiscal years.

The Department of Labor and Employment failed to record the net amortization of investments for the previous five fiscal years, thus understating investment income by \$6,041,655.

The Department of Regulatory Agencies failed to record several payments from Qwest for the Disabled Telephone Users Fund. The net amount was \$560,510.

NOTE 17. FUTURE REFUNDS

In the 1999 regular session, the General Assembly enacted mechanisms to refund Fiscal Year 1998-99 and subsequent years= excess revenue. In succeeding sessions the General Assembly has enacted additional mechanisms to refund the excess revenue. The laws enacted to refund the TABOR liability are:

1. An earned income tax credit of 10 percent.
2. An income tax credit for foster parents.
3. A business personal property tax credit.
4. An income tax credit for qualified individuals who save for post-secondary education, purchase a first home, or start a business.
5. An interest, dividend, and capital gains exclusion up to \$1,200 for individuals and \$2,400 for couples.
6. An income deduction for capital gains taken on assets purchased prior to May 9, 1994 and held for at least five years.
7. An income tax credit to health and dental care providers who practice in certain rural areas.
8. An income tax credit that is a percentage of the federal child care credit.
9. A reduction in the annual registration fees for motor vehicles.
10. An income tax credit for contributions to high technology scholarships.
11. An additional income tax deduction of another \$300 (\$600 for a couple) for interest, dividend, and capital gains over that listed above.
12. A sales tax refund when that tax is above a rate of 0.01 percent and is imposed on new or used commercial trucks or other vehicles that are used in interstate commerce and have a gross weight of more than 26,000 pounds.
13. An income tax deduction for charitable contributions in excess of \$500 made by individuals who claim the standard deduction.

14. A sales tax exemption for certain pollution control devices.
15. An income tax credit for contributions to the Colorado Institute for Telecommunications Education.
16. An income tax credit for the cost of health benefit plans not paid by the employer or deducted from the individuals federal adjusted gross income.
17. An income tax credit for eligible agricultural value-added cooperatives.
18. An expansion of the capital gains modification to include capital gains realized in tax years beginning on or after January 1, 1999, as well as a reduction of the holding period from five years to one year.
19. Any remaining amount is given to all full-year Colorado residents 18 years and older as a refund of sales taxes.
The sales tax refund is a fixed amount for each of six tiers of federal adjusted gross income. The Department of Revenue calculates the amount of the individual refund for each tier as a statutory percentage of the total sales tax refund divided by the number of anticipated taxpayers in each tier.

Since the State does not have excess revenues in Fiscal Year 2001-02, none of the statutory refund mechanisms will be used until the State is required to make a refund of future years excess revenues.